BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DUSTIN C. EWAN Claimant	}
VS.	Docket No. 204,369
BEACHNER CONSTRUCTION CO., INC.	DOCKET NO. 204,309
Respondent AND	
AETNA CASUALTY & SURETY CO. Insurance Carrier	

ORDER

The respondent and its insurance carrier request review of Administrative Law Judge Shannon S. Krysl's Preliminary Hearing Order dated October 26, 1995.

ISSUES

The Administrative Law Judge awarded claimant medical and temporary total disability benefits. The respondent and insurance carrier request review and contend claimant's present condition and present need for medical treatment is related to a subsequent injury rather than the injury claimant sustained at work on February 13, 1995. That is the sole issue now before this Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

- (1) Because the question now before us relates to whether claimant's present condition is a result of an accidental injury that arose out of and in the course of his employment with the respondent or, instead, is the result of a subsequent nonwork-related accident, the Appeals Board has the jurisdiction and authority to review this preliminary hearing issue. See K.S.A. 44-534a.
- (2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. The Appeals Board adopts the analysis and conclusion of the Administrative Law Judge as set forth in the preliminary hearing transcript. It is uncontroverted claimant sustained injury when he slipped and fell approximately ten (10) feet from a trailer he was loading on February 13, 1995. Immediately after the incident, claimant experienced symptoms in his low back, legs, and hips. After a period of treatment with the company doctor, claimant

continued to experience symptoms in his low back and hips, and had even begun to limp. Continuing to work, claimant's symptoms began to increase.

At this juncture of the proceeding, the evidence fails to establish that claimant sustained a new injury when he slipped on July 4, 1995, while attempting to pick up a volleyball. No medical evidence has been presented to support this contention. Other than a sore groin muscle, claimant testified there was little change in the symptoms in his back, legs and hips after this incident. The Administrative Law Judge personally observed claimant and respondent's witnesses testify at the preliminary hearing and, therefore, could assess their demeanor and credibility. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's assessment of claimant's credibility. Based upon claimant's testimony, coupled with the medical evidence, the Appeals Board finds for purposes of preliminary hearing that it is more probably true than not that claimant's present condition and need for medical treatment is the direct result of the accident that claimant sustained at work on February 13, 1995.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Shannon S. Krysl's Preliminary Hearing Order dated October 26, 1995, should be, and hereby is, affirmed.

Dated this day of December 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Timothy A. Short, Pittsburg, Kansas Wade A. Dorothy, Lenexa, Kansas Shannon S. Krysl, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED.